

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION**

WAYNE POZZI AND KELLY POZZI
Plaintiffs,

vs.

**STATE AUTOMOBILE MUTUAL
INSURANCE COMPANY**
Defendant.

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Civil Action Number

Jury

DEFENDANT’S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant, State Automobile Mutual Insurance Company (“State Auto”), files this Notice of Removal pursuant to 28 U.S.C. §1446(a), and respectfully shows as follows:

I.
INTRODUCTION

1. Plaintiffs are Wayne Pozzi and Kelly Pozzi. (hereinafter “Plaintiffs”); Defendant is State Automobile Mutual Insurance Company (hereinafter “State Auto” or “Defendant”). There are no other parties. *See* Plaintiffs’ Original Petition, attached as Exhibit “A - 1”.

2. On August 19, 2016, Plaintiffs filed Cause No. 16-08-79946-D, *Wayne Pozzi and Kelly Pozzi vs. State Automobile Mutual Insurance Company* in the 377th Judicial District Court of Victoria County, Texas (“State Court Action”). *See* Exhibit “A - 1”. Plaintiff’s suit alleges breach of contract and violations of the Texas Insurance Code, relating to damage allegedly suffered at Plaintiff’s business located at 16108 NW Zac Lentz Pkwy, Victoria, Texas 77905. *See* Exhibit “A - 1”. Plaintiffs did not demand a jury trial in their Original Petition. *See* Exhibit “A - 1.”

3. A citation was issued and State Automobile Mutual Insurance Company was served on August 26, 2016. *See* Exhibits “A – 2” and “A – 3”, and Affidavit of Jeff Maxwell attached as Exhibit “B”. State Auto files this Notice of Removal within the 30-day time period required by 28 U.S.C. §1446(b). *Bd. of Regents of Univ. of Tex. Sys. v. Nippon Tel. & Tel. Corp.*, 478 F.3d 274, 278 (5th Cir. 2007). State Auto files its Answer in this Court, contemporaneously with the filing of this Notice. State Auto demands a trial by jury in this Court.

4. Plaintiffs have not filed any amended pleadings and no additional parties have been joined. The State Court’s Docket Sheet is attached as Exhibit “A – 4.”

II.

REMOVAL BASED ON DIVERSITY JURISDICTION

5. Pursuant to 28 U.S.C. §1332(a), State Auto removes this case as it involves a controversy between parties of diverse citizenship and an amount in controversy that exceeds \$75,000.

6. Plaintiffs are citizens of Texas. *See* Exhibit “A - 1”. State Automobile Mutual Insurance Company is a foreign corporation organized under the laws of the state of Ohio with its principal place of business located at 518 E. Broad Street, Columbus, Ohio 43215. *See* Exhibit “B.”

7. Additionally, the amount in controversy exceeds \$75,000, excluding interest and costs. 28 U.S.C. §1332(a). Plaintiff’s Original Petition seeks monetary relief of “\$1,081,600 for the building + 4% inflation guard for the policy, less the \$2,500 deductible[,] . . . \$10,000 for debris removal, \$1,000 for fire department service charge, \$10,000 for pollution clean-up and removal + \$1,000 for outdoor property.” *See* Exhibit “A – 1.”

8. State Auto is the only defendant in this action; therefore, no consent is needed for the removal of this case to federal court.

9. An Index of Exhibits is attached as Exhibit “A”. Copies of all pleadings, process, orders, and other filings in the State Court Action are attached to this notice as Exhibits “A - 1” through “A - 6”, as required by 28 U.S.C. §1446(a). A list of the counsel of record for all parties, as required by Local Rule 81.6 is attached as Exhibit “C.”

10. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court where the suit has been pending is located in this District and within this Division.

11. State Auto will promptly file a copy of this Notice of Removal with the clerk of the court in the pending State Court Action.

III.
JURY DEMANDED

12. State Auto requests that this matter be heard by a jury in this Court.

IV.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant, State Auto, prays that this case be removed to the United States District Court for the Southern District of Texas, Victoria Division, and that further proceedings in the State Court Action be discontinued, and that this Court assume full jurisdiction over such action as provided by law.

Respectfully submitted,

/s/ Sterling Elza

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**ATTORNEY FOR DEFENDANT,
STATE AUTOMOBILE MUTUAL
INSURANCE COMPANY**

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing was served upon the Plaintiffs by serving the following counsel of record, on this the 16th day of September, 2016, via Certified Mail Return Receipt Requested and Fax:

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/s/ Sterling Elza

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